

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**TRAMAINE BROWN,**  
**Plaintiff**

**v.**

**UNITED STATES OF  
AMERICA, et al.,**  
**Defendants**

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**No. 1:22-cv-00404**

**(Judge Kane)**

**ORDER**

**AND NOW**, on this 24th day of March 2023, upon consideration of Plaintiff Tramaine Brown (“Plaintiff”)’s motion to strike the United States of America (“United States”) notice of substitution (Doc. No. 26), and upon consideration of the United States’ motion to dismiss for lack of jurisdiction and/or failure to state a claim upon which relief can be granted, filed pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (Doc. No. 21), and for the reasons set forth in the accompanying Memorandum, **IT IS ORDERED THAT:**

1. Plaintiff’s motion to strike the United States’ notice of substitution (Doc. No. 26) is **GRANTED in part** and **DENIED in part** as follows:
  - a. Plaintiff’s motion is **GRANTED** as to his Eighth Amendment claim filed against Ryan Miller (“Miller”) pursuant to Bivens, and the United States is not permitted to substitute itself for Miller with respect to this claim;
  - b. Plaintiff’s motion is **DENIED** as to his state law tort claims for assault, battery, and intentional infliction of emotional distress filed against Miller, and the United States is permitted to substitute itself for Miller with respect to these tort claims;
2. The United States’ motion to dismiss for lack of jurisdiction and/or failure to state a claim (Doc. No. 21) is **GRANTED in part** and **DENIED in part** as follows:
  - a. The United States’ motion to dismiss for lack of jurisdiction is **GRANTED** to the extent that Plaintiff’s Federal Tort Claims Act (“FTCA”) claim is based upon allegations that the United States failed to adhere to 18 U.S.C. § 4042 and Center for Disease Control guidelines and recommendations;

- b. The United States' motion to dismiss for lack of jurisdiction is **DENIED** to the extent that Plaintiff's FTCA claim is based upon allegations that the United States failed to adhere to the Bureau of Prisons' COVID-19 Pandemic Response Plan;
  - c. The United States' motion to dismiss for failure to state a claim is **GRANTED**, and Plaintiff's state law tort claims for negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress asserted against the United States are **DISMISSED**;
- 3. Plaintiff's state law tort claims for assault and battery are **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii);
  - 4. Plaintiff's Eighth Amendment claim asserted against Miller is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii);
  - 5. Plaintiff is **GRANTED** leave to file a third amended complaint with respect to his tort claims for negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress;
  - 6. The Clerk of Court is directed to mail Plaintiff a civil rights complaint form;
  - 7. Plaintiff shall title that complaint form "Third Amended Complaint" and shall include the docket number for this case, 1:22-cv-00404; and
  - 8. In the event that Plaintiff fails to file a third amended complaint within **thirty (30) days** of the date of this Order, this action will be subject to dismissal.

s/ Yvette Kane  
Yvette Kane, District Judge  
United States District Court  
Middle District of Pennsylvania